

## **INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR UTILITIES IN THE HIGHWAY RIGHT OF WAY**

The permittee shall indemnify, defend, and save harmless the State of Arizona, acting by and through the Arizona Department of Transportation, from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney' fees and/or litigation expenses, which may be brought or made against or incurred by the Department on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the permittee, its employees, agents, representatives, or contractors or subcontractors, their employees, agents, or representatives, in connection with or incident to the performance of the work. The permittee's obligation under this Subsection shall not extend to any liability caused by the sole negligence of the Department, or its employees.

The permittee shall indemnify, defend, and save harmless any county or incorporated city, its officers and employees, within the limits of which county or incorporated city work is being performed, all in the same manner and to the same extent as provided in the above paragraph.

Prior to the permittee encroaching or performing any work in the Department's highway right of way, the permittee shall file with the Department a certificate or certificates of insurance executed by an insurance company doing business in the State of Arizona and acceptable to the Department, or subject to the provisions hereof, a certificate of self-insurance. The certificate of insurance shall be on a form provided by the Department, and shall state that with respect to work to be performed in the Department's highway right of way, the permittee carries insurance in accordance with these requirements.

Without limiting any liabilities or any other obligations of the permittee, the permittee shall provide and maintain the minimum insurance coverage listed below until such time as all facilities are removed from the Department's property; or the permittee, at the sole discretion of the Department, may provide a certificate that it is self-insured in whole or in part, which certificate of self-insurance shall contain the same coverage as listed below. If wholly self-insured, the permittee shall provide such certificate; if self-insured in part, the permittee shall provide a certificate from its insurance company up to that insurance company's limits, as well as a certificate from the permittee as to the extent of self-insurance.

- (1) General Liability insurance with a minimum combined single limit of \$1,000,000.00 each occurrence applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. Further, the policy shall include coverage for

the hazards commonly referred to as XCU (explosion, collapse, and underground). The products and completed operations coverage shall extend for one year past acceptance, cancellation, or termination of the work; or in the event the permittee's improvements are to remain the Department's right of way, for one year after such time as the improvements are removed from said right of way. The policy shall contain a severability of interests provision.

- (2) Comprehensive Automobile Liability insurance with a combined single limit for bodily injury and property of not less than \$1,000,000.00 each occurrence with respect to the permittee's owned, hired, or non-owned vehicles, assigned to or used in performance of the work.

The policies required by 1 and 2 above shall be endorsed to include the Department, its agents, officials, employees, and the State of Arizona as additional insureds and shall stipulate that the insurance afforded the permittee shall be primary insurance and that any insurance carried or provided by the Department, its agents, officials, employees, or the State of Arizona shall be excess and not contributory insurance to that provided by the permittee as provided by Arizona Revised Statute 41-621C. Should the permittee be self-insured in whole or in part, the permittee shall provide a statement that the Department, its agents, officials, employees, and the State of Arizona are included as additional insureds under the self-insurance program to the same extent as they would be with commercial insurance, and that it is primary to any coverage carried or provided by the State of Arizona. The statement must be signed by a representative of the permittee with authority to sign such a statement. If the representative of the permittee is not a director or officer of the company, the permittee shall provide documentation of the representatives's authority to bind the company with the certificate.

All insurance policies, certificates, or certificates of self-insurance shall include a requirement providing for thirty days prior written notice to the Department of any cancellation or reduction of coverage. The permittee shall cease operation on the occurrence of any such cancellation or reduction and shall not resume operations until a required insurance is in force and new certificates of insurance or self-insurance have been filed with the Department. Upon cancellation or reduction, the Department may require immediate removal of all of the permittee's improvements from the right of way.

The certificate(s) of insurance or self-insurance shall be issued to the Department by the permittee's insurer as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Certificates of insurance and self-insurance should be addressed as follows:

Arizona Department of Transportation  
Manager - Maintenance Permits Services  
206 S. 17th Avenue, Mail Drop 004R  
Phoenix, Arizona 85007

Upon application for a permit, the permittee shall attach a copy of the certificate of insurance or self-insurance to said permit.

Failure on the part of the permittee to produce or maintain required insurance may result in termination of the permit. Upon such termination, the Department may require immediate removal of all of the permittee's encroachments from the right of way.

The Department reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

The permittee and its insurers providing the required coverages agree to waive all right of recovery and/or subrogation against the State of Arizona, the Department, and its agents, officials and employees.

With respect to any damages set forth above, regardless of whether the damages exceed the limits of liability set forth above, it is agreed the permittee agrees to hold the Department, its agents, officials, employees, or the State of Arizona harmless for any damage or claims arising out of acts of the permittee, its agents, officers, or employees, or out of the failure to act by the permittee, its agents, officers, or employees, or for any act that causes loss of service to the permittee's customers.